

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Indian Health Service Refer to: FPM 735
Rockville, Maryland 20857

INDIAN HEALTH SERVICE CIRCULAR NO. go-1

OUTSIDE ACTIVITIES

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1. PURPOSE

This circular establishes the policy of the Indian Health Service (IHS) on outside employment and other outside activities. It sets forth supplementary conditions on outside activities for IHS employees and describes the procedures for requesting approval of outside activity; It is intended to be used in conjunction with the Department of Health and Human Services (HHS) Standards of Conduct, Part 73, Subpart G.

2. COVERAGE

The provisions of this circular apply to all civil service employees, both in the competitive and the excepted service, and to Commissioned Corps personnel.

3. BACKGROUND

The **HHS** Standards of Conduct, Part 73, Subpart G, set forth restrictions and requirements on outside activities applicable to all covered employees of the Department. The Director, IRS, using the authority contained in Section 75.735-708(a)(4) of the HHS Standards of Conduct, has developed additional conditions for IHS employees in order to meet the unique requirements of the Agency.

Additionally, the Reorganization Order of January 4, 1988, (52 FR 470531, which elevated IHS to an agency of the Public Health Service (PHS), vested in the Director, IHS, new authority related to outside activities. This authority and current redelegations to Area Directors, the Director of Headquarters Operations, the Deputy Director, IHS, and the Director, IHS, are reflected in this issuance. (Throughout this circular the term Area Director is used to include the Associate Director, Office of Health Program Research and Development, Tucson, Arizona.

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Within the guidelines stated herein and in the HHS Standards of conduct outside activities may be appropriate when they do not adversely affect the performance of official duties, reflect discredit on IHS the Department or the Government in general, or give rise to a real or apparent conflict of interest. Outside activities may include a variety of charitable, religious, or community undertakings. Employees are encouraged to engage in teaching, lecturing, and writing and publishing when applicable conditions are met.

4. POLICY

An employee may engage in outside employment or other outside activity when the activity does not violate a provision of law, including Chapter 11 of Title 18, United States Code (USC), or regulation, including the HHS Standards of Conduct, Part 73, Subpart G, or this circular. However, an employee may not engage in outside activity, whether or not in violation of any specific provision of law, when the activity is not compatible with the full and proper discharge of the duties and responsibilities of the employee's Government position. Outside activity which takes an employee's time and attention during official working hours, if in duty status with pay, is not allowed.

An employee may engage in outside activity only after obtaining advance administrative approval when such approval is required by Section 75,735-708 of the HHS Standards of Conduct or Part 6 of this circular.

All covered employees will be expected to adhere-strictly to the requirements of this circular.

5. CONDITIONS

A. Statutory Prohibitions

Statutory provisions of Title 18 USC, Chapter 11, and Title 41 USC, Chapter 7 relate to outside work both during and after Government employment as follows:

- (1) An employee shall not, except in the discharge of his/her official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another.
- (2) A person shall not, at any time after his Government employment has ended, represent anyone else other than the United States in connection with a particular matter involving specific parties in which the United States is a party or has an interest and in which he participated personally and substantially for the Government.

- (3) A person **shall** not, for two years after **his** Government employment has **ended**, represent anyone else other than the United States in connection with a particular matter involving **specific** parties in which the United States is a party or has an interest and which was within the boundaries **of** his official responsibility, **(but in which he may not have participated personally and substantially) during the last year of his** Government service.
- (4) Certain senior officials (**i.e.** Senior **Executives**, employees whose basic pay rate is equal to a greater than GS-17, **step 1**, and Commissioned Officers **at** C-07 and 08) shall **not**, for (one year after Government employment **has ended**, represent anyone else other **than** the **United States** to their former **Department** or agency in-connection with **any** matter **pending before the** Department or agency or in which the **Department** or agency **has an** interest.
- (5) A procurement official shall not, for two years after **participating** in a procurement **for the** Government, **participate on behalf of** a contractor in negotiations for the **award**, modification or extension of **such procurement or participate on behalf of** a contractor in the performance **of** the contract.

B. **Incompatible Activities**

An employee **shall not engage in** incompatible **outside employment** or other **outside** activity whether or not in violation of any **specific** provision of statute. Incompatible activities **include, but are not limited to:**

- (1) **Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value** in any circumstances in which acceptance may result in, or create the appearance of, **conflicts of interest;**
- (2) **Outside employment** which tends to impair mental or physical capacity to perform government duties and responsibilities in an **acceptable** manner;
- (3) Work which identifies the Department or any **employee** in his/her official **capacity with any organization** commercializing products relating to work conducted by **the** Department, or with **any** commercial advertising matter, or work performed under such circumstances as to give **the** impression **that it is an official act of the Department** or represents an official point of view;
- (4) **Acceptance of a salary or anything of monetary value** from a private source as compensation **for HIS/HER SERVICES ON BEHALF OF THE GOVERNMENT.** For example, a Department employee may be called upon, as part of his/her official duties, to participate in a **professional meeting sponsored by a non -Government organization,** or to **contribute** a paper or other writing prepared **on official time** for publication under non-Government auspices. **The employee**

must not accept an honorarium or fee for such services, even though the organization accepting the service customarily makes such a payment to those who participate. In certain cases of this kind, the organization involved may indicate a desire or willingness to make a contribution to some charity; educational institution, or the like, in appreciation of the services furnished by the department employee since he cannot accept the usual, payment. Department standards require that all offers to make such a contribution be refused. No Department employee may suggest, or agree to a suggestion by others, that such a contribution should be made. Any employee with whom such a question is raised shall explain that the service involved was provided as an official action of the Department and is authorized by law. Under these circumstances, it is inappropriate for any payment to be made, even indirectly and to a third party, for services which are furnished without charge by the Government; and

- .(5) An employee who is a Presidential Appointee covered by Section 102 of Executive Order 12674 (54 Fed. Reg. 15159) shall not receive any earned income for any outside employment or activity performed during that presidential appointment.

C. Professional and Consultative Services

Employees may engage in outside professional or consultative work only after meeting certain conditions. The conditions which must be met are:

- (1) The work is not to be rendered to organizations, institutions, or State or local governments with which the official duties of the employee are directly related, or indirectly related if the indirect relationship is significant enough to permit existence of a conflict or apparent conflict of interest; and
- (2). The work is not to be rendered for compensation to help organizations, institutions or government units prepare or aid in the preparation of grant applications, contract proposals, program reports, and other material. which is designed to become the subject of dealings between the institutions or government units and the Federal Government. All requests to perform consultative services, both compensated and uncompensated, for institutions or government units which have recently negotiated or may in the near future seek a contract or grant from the Federal Government must be carefully appraised to avoid any conflict or apparent conflict of interest.
- (3) Advance administrative approval must be obtained (see 6.B.(1)c). Such approval, is required whether or not the services are for compensation, and whether or not it is related to the employee's official duties.

- (4) **Membership on a Board of Directors, Board of Regents, Board of Trustees, Planning Commission, advisory council or committee or: on any other body which provides advice, counsel, or consultation; shall be considered outside consultative services for which advance administrative approval is required.**

0. Additional Requirements

- (1) Membership of an IHS employee on a tribal council (or other tribal governing body) is not allowed. Such membership places the employee in a real or apparent conflict of interest position and constitutes a violation of Title 18 USC 205, which is described in 5.A.(1) above. An employee participating as a member of a tribal council must relinquish the membership (unless the employee chooses to resign his/her position with the IHS) or face the adverse consequences of non-compliance. An employee seeking election to a tribal council is advised that if elected he/she will be in violation of law and IHS policy unless either the membership or Government position is relinquished. An exception to the requirements of this paragraph may be made for a person appointed (as contrasted with elected) to a tribal-council if declaration of appointment is not expedient for cultural-religious reasons. An employee seeking exception must submit a request for advance approval on Form HHS-520 along with a statement explaining why. declination is not expedient.
- (2) Experience has shown that outside work activity which consumes an excessive amount of time tends to impair an employee's mental or physical capacity to perform Government duties and responsibilities in an acceptable manner., A benchmark of 8 hours per week or 400 hours per year, which has been used elsewhere in Government, will be adopted. Therefore, an employee may not normally engage in an outside work activity (or combination of outside activities) which consumes more than 8 hours per week or 400 hours per year. Employees seeking an exception to this requirement must submit a request for-advance approval on Form HHS-520. However, the number of hours notwithstanding, outside work. should not interfere with the normal schedules of duty, including night or weekend coverage, either directly (absence from duty station during duty hours) or indirectly (when outside work activities cause fatigue which interferes with effective performance on the job).
- (3) A decision to engage in outside activity should be based m careful consideration of the provisions stated herein and in the HHS Standards of Conduct. If there is any question on the appropriateness of an outside activity, employees should discuss the matter with their supervisor. This should be done before the activity is undertaken.

6. ADMINISTRATIVE APPROVAL

A. Advance Approval

When administrative approval is required for an outside activity such approval must be **obtained** in advance through a Form HHS-520. Failure to obtain advance administrative approval when required does not relieve an employee of the responsibility to obtain retroactive approval upon learning of the omission. Further, the absence of the requirement to obtain administrative **approval** for a particular activity **does not mean** that an employee may engage in that activity if **doing so** would violate any provision of law, regulation or this circular.

8. Activities Requiring Approval

- (1) As specified in Section 73.735-708 of the HHS Standards of Conduct, administrative approval is required for the following outside activities:
 - a. Certain **writing** or editing activities;
 - b. Certain **types of teaching and lecturing**;
 - c. All professional and consultative services;
 - d. - Certain office-holding activities in professional societies.
- (2) Administrative approval is also required for the following outside activities
 - a. Activities directly involving tribal organizations.
 - b. Running for **office** in a tribal government organization;
 - c. Service **on health boards** which deal **with IHS**;
 - d. Private practice **by** medical and **dental**. officers or other **health** professionals;
 - e. Outside activities for **which exception is sought as provided in 5.D.(1) and (2)**.
- (3) Administrative approval is not required for outside work activities not listed under 6.B.(1) and (2) above.

C. Procedures

- (1) Except as provided in C.(4) below, IHS Area Directors will approve or disapprove requests for all outside activities listed **under** 6.8. (i) *and* (2) above,, whether or **not done** for compensation, **for employees** in their respective organizations.
- (2) **The** Director **of** Headquarters Operations will approve or disapprove all outside activity requests **for** Headquarters **employees in** Rockville **and** employees **of** Headquarters West, Albuquerque, New Mexico (**except** as provided **in C. (4) below**).
- (3) **The Deputy** Director, IHS, will approve or disapprove all outside activity requests (**except as** provided **in C. (4) below**) for Area Directors, **including** the Associate Director, **Office of Health** Program **Research and** Development.
- (4) **The** Director, IHS, will approve or disapprove outside activity requests to provide consultative *or* professional services to organizations, including governments, which have been awarded a Federal grant or contract, *or which have* applied for such.
- (5) On **outside** activity requests directly involving tribal organizations, work on Indian reservations, and private practice **by medical and dental** officers (and possibly *others*), the concurrence **of** appropriate tribal authorities and/or local medical or other professional societies **may be necessary**. **The** Service Unit Director may **use** his/her discretion **on a case by case basis in** soliciting such concurrence before recommending approval or disapproval to the Area Director. However, if concurrence **of the** appropriate tribal authority is deemed necessary and more than one tribal group is involved, concurrence must be obtained from all. **The** Area Director must approve only requests for which **he/she feels assured that** there will be no adverse impact **on** the provision **of** health services, to Indians from **such outside employment** .
- (6) **Requests** for which the **Area** Director has approval authority must **be** cleared through the Area Personnel Director/Officer before being presented to the Area Director for approval.
- (7) **Outside** activity requests from Headquarters and Headquarters West **employees (except as stated** in C. (9) below) will be forwarded through the appropriate **Associate** Director to the Director, **Division of** Personnel Management, and **then** the Director, Program Integrity and **Ethics** Staff before being presented to the Director **of** Headquarters Operations for approval or disapproval..

- (8) Outside activity requests from Headquarters and Headquarters West' employees involving a Federal grant or contract will be submitted through the appropriate Associate Director to the Director, Division of Personnel Management, and then the Director, Program Integrity and Ethics Staff before being presented to the Director for approval or disapproval.
- (9) Employees should make requests in writing by submitting i-W-520, Request for Approval of Outside Activity (See Exhibit A). HHS-520 should be submitted for initial requests as well as revised requests for approved activities when there is a change in the nature or scope of services or duties performed. Employees must annually report all approved outside activities on HHS-521, "Annual Report of Outside Activity," by September 10 of each year (See Exhibit 8). Officials who approve outside activity requests must, in turn, submit an annual status report in October of each year on the review of HHS Form 521's from employees under their review authority. The specific October report deadline and details of the reporting requirements will be communicated to all reviewing officials in a memorandum to be issued in July.

0. Evaluating Requests

Each outside activity request will be considered on its merits. Requests must be thoroughly reviewed to insure that the outside activity for which approval is being sought is permissible under applicable guides. The review should appraise the request in terms of:

- (1) Compliance with statutes and regulations, including Part 73 of the HHS Standards of Conduct, and this circular;
- (2) Conflicts or apparent conflicts of interests;
- (3) Potential problems arising from the employee's participation in the outside activity which could result in embarrassment to the Department or the employee;
- (4) The place where the work will be conducted;
- (5) Estimated total time that will be devoted to the activity as well as to any previously approved activities;
- (6) Whether Services can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work in leave status that will be required; and
- (7) Method or basis of compensation.

E. In addition, each outside work activity request will be considered based on the following general Principles:


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- (1) Because limited staff and heavy workload make increasingly heavy demands upon IHS personnel, it is important that annual leave and off-duty hours be utilized to assure continued well-being and fitness for duty by providing time for rest and recreation (better known as R&R).
- (2) Because medical and dental officers, in particular, are subject to emergency duty and 24 hour call, accepting commitments for private practice after duty hours may conflict with the individual's obligation to the PHS. Such absence could cause a real hardship at small IHS facilities. In addition, private patient-provider relationships could interfere by requiring an employee's attention during duty hours.
- (3) The primary responsibility of IHS employees is to provide the best possible care to Indian patients.
- (4) There may also be a secondary responsibility to the non-Indian population in a rural area where the needs of a community exceed the availability of medical, dental and other health care personnel, and where Indian patients contribute greatly to the workload of a rural hospital. Circumstances of this nature may well outweigh the off-duty obligations of the employee to the Service, and it would be in the best interest of the Government and the community to provide any required care for non-Indian patients.

7. SUPERSESSiON

This circular supersedes IHS Circular No. 83-5, dated August 18, 1983, and IHS Circular 83-5, Amendment 1, dated October 20, 1983.


Everett R. Rhoades, M.D.
Assistant Surgeon General
Director, Indian Health Service

Attachments

- Exhibit A - Request for Approval of Outside Activity - HHS-520
Exhibit 6 - Annual Report of Outside Activity - HHS-521

EXHIBIT A

REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY

(Ref. HHS Personnel Guides for Supervisors, Chapter IV, Guide 7, Supplement 1)

☐ Initial Request
☐ Revised Request
☐ Renewal

NOTE TO EMPLOYEE: See information on Reverse Side of This Form

1. NAME (Last, First, Initial)	2. ORGANIZATIONAL LOCATION (Principal Operating Component, Bureau, Division)
3. TITLE OF POSITION	4. GRADE AND SALARY (Federal)
5. NAME, ADDRESS AND BUSINESS OF PERSON OR ORGANIZATION FOR WHOM OUTSIDE SERVICES WILL BE PERFORMED	6. LOCATION WHERE SERVICES WILL BE PERFORMED
7. NATURE OF ACTIVITY (Indicate type of activity, e.g., teaching, consultative services, and give full description of specific duties or services to be performed. Specify, when possible, the scheduled days of week and hours of day proposed activity will be performed.)	

8. ESTIMATED TIME INVOLVED

a. PERIOD COVERED

FROM

TO

b. ESTIMATED TOTAL TIME DEVOTED TO ACTIVITY (If on a continuing basis, give estimated time per year)

c. WILL WORK BE PERFORMED ENTIRELY OUTSIDE USUAL WORKING HOURS?

☐ YES☐ NO

IF NO, INDICATE ESTIMATED NUMBER OF HOURS OR DAYS OF ABSENCE FROM WORK

9. DO YOUR OFFICIAL DUTIES RELATE IN ANY WAY TO THE PROPOSED ACTIVITY?

☐ NO☐ YES (Describe)

*10. IF PROVIDING CONSULTATIVE OR PROFESSIONAL SERVICES, ARE YOUR WOULD-BE ASSOCIATES RECEIVING OR WILL THEY SEEK, A GRANT OR CONTRACT FROM A FEDERAL AGENCY?

☐ NO☐ YES (Describe)

11. METHOD OR BASIS OF COMPENSATION

☐ FEE☐ HONORARIUM☐ PER DIEM☐ PER ANNUM☐ ROYALTY☐ EXPENSES☐ OTHER (Specify)

12. WILL COMPENSATION BE DERIVED FROM A DHEW GRANT OR CONTRACT?

☐ NO☐ YES (Describe)

13. THIS REQUEST IS MADE WITH FULL KNOWLEDGE OF DEPARTMENT AND PRINCIPAL OPERATING COMPONENT POLICY AND PROCEDURES ON OUTSIDE ACTIVITIES. THE STATEMENTS I HAVE MADE ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

14. SIGNATURE OF EMPLOYEE

15. DATE

*16. ADDITIONAL INFORMATION ATTACHED

☐ YES ☐ NO

*17. ACTION RECOMMENDED

a. ☐ APPROVAL☐ DISAPPROVAL

b. SIGNATURE

c. TITLE

d. DATE

18. ACTION TAKEN

a. ☐ APPROVAL* ☐ DISAPPROVAL

b. SIGNATURE

c. TITLE

d. DATE

*See reverse of form

HHS-820 (Rev. 6/81)

EXHIBIT A (Cont.)

INFORMATION TO EMPLOYEE: The collection of the information requested on this form is authorized by Executive Order 11222 and the regulations issued thereunder. The information you disclose will be used to determine whether a conflict of interest would exist between the outside activity and your official duties. The information will be held in confidence and made available only to persons specifically authorized by the head of the principal operating component or designee. The information may be used: a) by a Federal, state or local agency when there is an indication of a violation or potential violation of law; b) by a Federal agency in deciding on the hiring or retention of an employee or other benefit; c) for statistical information, excluding personal identification of individuals; and d) for other routine uses published in accordance with 5 USC 552a. Your failure to provide the information requested will preclude your engaging in the outside activity for which approval is required.

INSTRUCTIONS

Item 5 – Self-Employment: If applicable, indicate self-employment, the type of service (as medical, legal, etc.), whether alone or with partners, giving their names, and, if providing professional services to a large number of clients or patients, estimate the total number rather than listing them separately.

Item 10 – Federal Grants or Contracts Involved: Describe the Federal grants or contracts (type, granting or contracting department, etc.). Full details must be provided on any aspect of professional and consultative services which involves, directly or indirectly, the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between institutions and government units and the Federal Government.

Item 16 – Attachments: Be sure to sign copies of all attachments submitted.

ITEM 17 – COMMENTS OF RECOMMENDING OFFICIAL

ITEM 18 – REASON FOR DISAPPROVAL

EXHIBIT B

ANNUAL REPORT OF OUTSIDE ACTIVITY
(Ref.: HHS STANDARDS OF CONDUCT REGULATIONS)

NOTE TO EMPLOYEE: See Information on Reverse Side of This Form

SECTION I

TO:	1. EMPLOYEE'S NAME, TITLE, GRADE, AND SALARY	2. DATE
FROM:	3. APPROVING OFFICIAL	4. REPORT PERIOD ENDING August 31, _____

Each person for whom an approval for outside work is currently on record is required to file an annual report. It will be necessary, therefore, for you to complete and return this form to me through regular channels within 15 days of the date shown in Item 2.

SECTION II - PRECEDING 12 MONTHS

5. NATURE OF APPROVED ACTIVITY	6. ACTIVITY PERFORMED (Person or organization and address)
7. WAS THE ACTIVITY ACTUALLY PERFORMED? <input type="checkbox"/> YES <input type="checkbox"/> NO If "No", explain _____	
8. AMOUNT OF TIME SPENT ON ACTIVITY (Specify hours worked)	9. HAS THERE BEEN ANY CHANGE WITH RESPECT TO INFORMATION, OTHER THAN SHOWN IN ITEM 8, ON WHICH APPROVAL WAS BASED? (If "Yes", a revised request must be submitted) <input type="checkbox"/> YES <input type="checkbox"/> NO

SECTION III - NEXT 12 MONTHS

10. DO YOU ANTICIPATE THAT THE ABOVE ACTIVITY WILL CONTINUE? <input type="checkbox"/> YES <input type="checkbox"/> NO	
11. DO YOU ANTICIPATE ANY CHANGE WITH RESPECT TO INFORMATION PREVIOUSLY FURNISHED (If "Yes", a revised request must be submitted) <input type="checkbox"/> YES <input type="checkbox"/> NO	
12. DO YOU WANT YOUR REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY CANCELLED? <input type="checkbox"/> YES <input type="checkbox"/> NO If "Yes", indicate date _____	
13. SIGNATURE OF EMPLOYEE	14. DATE
15. REVIEWED BY (Signature and Title)	16. DATE OF REVIEW
17. COMMENTS (Continue on reverse, if necessary)	

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EXHIBIT B (Cont.)

INFORMATION TO EMPLOYEE: The collection of the information requested on this form is authorized by Executive Order 11222 and the regulations issued thereunder. The information you disclose will be used to determine whether a conflict of interest would exist between the continuation of the outside activity and your official duties. The information will be held in confidence and made available only to persons specifically authorized by the head of the Operating Division or designee. The information may be used: a) by a Federal, state or local agency when there is an indication of a violation or potential violation of law; b) by a Federal agency in deciding on the hiring or retention of an employee or other benefit; c) for statistical information, excluding personal identification of individuals; and d) for other routine uses published in accordance with 5 USC 552a. Your failure to provide the information requested will preclude your engaging in the outside activity for which approval is required.